

## Rep. Nadler Demands Independent Counsel to Investigate Cheney, Rumsfeld

Friday, 19 December 2008

WASHINGTON, D.C. — Congressman Jerrold Nadler (NY-08), Chairman of the Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, today urged Attorney General Michael Mukasey to appoint an independent counsel to investigate Vice President Richard Cheney, former Secretary of Defense Donald Rumsfeld, and other senior administration officials for violations of the law relating to the torture of prisoners in U.S. custody.

In a recent interview with Jonathan Karl of ABC News, Vice President Cheney said of the waterboarding of Khalid Sheikh Mohammed, "I was aware of the program, certainly, and involved in helping get the process cleared ... And I supported it."

Khalid Sheikh Mohammed was subjected to waterboarding.

Congressman Nadler wrote to the Attorney General, "The Vice President's public admission that he was aware of the program, certainly, and involved in helping get the process cleared is deeply disturbing. It implicates the Vice President in activity which appears to have been a direct violation of our criminal laws against the use of torture." Congressman Nadler continued, "Waterboarding has always, except in self-serving legal memos and statements by the Bush Administration, been regarded as torture. In 1948, the United States tried, convicted, and hanged Japanese generals for waterboarding Allied prisoners."

"This shocking admission by the Vice President demands at a minimum a federal investigation and, if necessary, the pursuit of criminal charges," said Congressman Nadler. "No one is above the law and, if the Vice President admits he broke the law, then he must be held responsible."

Also, a newly released bipartisan Senate Armed Services Committee report found that "Secretary of Defense Donald Rumsfeld's authorization of aggressive interrogation techniques for use at Guantanamo Bay was a direct cause of detainee abuse there." "If that doesn't demand an independent counsel, I don't know what does," said Congressman Nadler.

Congressman Nadler has been an active critic of executive abuses for many years. He has held numerous hearings on the Bush Administration's violations of our civil liberties, including hearings on the issue of torture and extraordinary rendition.

The full letter to the Attorney General follows:

December 19, 2008

Honorable Michael B. Mukasey

Attorney General of the United States

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530 0001

Dear Mr. Attorney General:

I am writing to urge you to appoint an independent counsel to investigate Vice President Richard Cheney, former Secretary of Defense Donald Rumsfeld, and other senior administration officials, for violations of the law relating to the torture of prisoners in U.S. custody, and, if appropriate, to pursue criminal charges.

As you may know, Vice President Cheney was recently interviewed by Jonathan Karl of ABC News.[1] In that interview, the Vice President engaged in the following exchange:

KARL: Did you authorize the tactics that were used against Khalid Sheikh Mohammed?

CHENEY: I was aware of the program, certainly, and involved in helping get the process cleared, as the agency in effect came in and wanted to know what they could and couldn't do. And they talked to me, as well as others, to explain what they wanted to do. And I supported it.[2]

As we know, those interrogation techniques included so-called "waterboarding." There is no question that waterboarding is an egregious form of torture. Waterboarding has always, except in self serving legal memos and statements by the Bush Administration, been regarded as torture. In 1948, the United States tried, convicted, and hanged Japanese generals for waterboarding Allied prisoners.

As you know, federal law makes it a crime to commit torture, or to engage in a conspiracy to commit torture.[3] The statute provides for a prison term of up to 20 years, or, if death results from the torture, a sentence of death.[4]

The Subcommittee on the Constitution, Civil Rights, and Civil Liberties received compelling testimony from Malcolm Nance, a former instructor at the U.S. Navy Survival, Evasion, Resistance and Escape School (SERE). As part of SEER training, instructors employed "dramatic and highly kinetic coercive interrogation methods through hands-on, live demonstrations and a simulated captive environment, which inoculated our students to the experience of a high-intensity stress and duress." [5]

Mr. Nance went on to describe one of the techniques:

Some of these coercive physical techniques have been identified in the media as enhanced interrogation techniques. The most severe of those employed by SERE was waterboarding . . . Most media representations or recreations of the waterboarding are inaccurate, amateurish, and dangerous improvisations which do not capture the true intensity of the act. Contrary to popular opinion, it is not a simulation of drowning. It is drowning. In my case, the technique was so fast and professional that I didn't know what was happening until the water entered my nose and throat. It then pushes down into the trachea and starts to process a respiratory degradation. It is an overwhelming experience that induces horror, triggers a frantic survival instinct. As the event unfolded, I was fully conscious of what was happening: I was being tortured.[6]

The Vice President's public admission that he was "aware of the program, certainly, and involved in helping get the process cleared" is deeply disturbing. It implicates the Vice President in this activity which appears to have been a direct violation of our criminal laws against the use of torture.

Similarly, a recent report issued by the Senate Armed Services Committee found that “Secretary of Defense Donald Rumsfeld’s authorization of aggressive interrogation techniques for use at Guantanamo Bay was a direct cause of detainee abuse there.”[7] Additional evidence shows that other top officials also were involved in authorizing similar activities.

In view of the fact that this policy was set and approved at the very highest level of the administration, it is impossible for the Department of Justice to investigate the matter without, at the very least, the appearance of a conflict of interest. It is important that the American people have confidence that their leaders are subject to the rule of law, and that those charged with enforcing the law do so without fear or favor. In this case, the Vice President of the United States has admitted to engaging in activities for which this nation has tried and executed individuals from other nations, most notably the major Japanese war criminals following World War II. Such a serious admission cannot go uninvestigated and, because it is the Vice President, his conduct cannot credibly be investigated and evaluated by anyone in the executive branch.

For these reasons, I urge you to appoint an independent counsel to investigate the actions of Vice President Richard Cheney, former Secretary of Defense Donald Rumsfeld and other senior administration officials as they relate to the torture or mistreatment of prisoners in U.S. custody.

Thank you for your attention to this matter.

Sincerely,

Jerrold Nadler

Chairman

Subcommittee on the Constitution, Civil Rights,

and Civil Liberties

[1]<http://abcnews.go.com/Politics/story?id=6464697&page=1> (Last visited December 17, 2008).

[2]Id.

[3]18 U.S.C. 2340A.

[4]Id.

[5]Torture and the Cruel, Inhuman and Degrading Treatment of Detainees: the Effectiveness and Consequences of “Enhanced” Interrogation, Hearing before the Subcomm. on the Constitution, Civil Rights and Civil Liberties of the House Judiciary Committee, at 22 (Testimony of Malcolm Nance)(Nov. 8, 2007).

[6]Id.

[7] Senate Armed Services Committee Inquiry into the Treatment of Detainees in U.S. Custody at xxviii, available at: <http://levin.senate.gov/newsroom/supporting/2008/Detainees.121108.pdf> (last visited December 19, 2008).

###

Jerrold Nadler has served in Congress since 1992. He represents New York's 8th Congressional District, which includes parts of Manhattan and Brooklyn.